foreign commerce. *Held*, that the Wilson Act applies to foreign as well as to interstate commerce. *De Bary & Co.* v. *Louisiana*, 227 U. S. 108, 33 Sup. Ct. 239. See NOTES, p. 533.

MANDAMUS — PARTIES — RIGHT OF DE FACTO OFFICER TO COMPEL PAYMENT OF SALARY. — In a mandamus proceeding to compel payment of a public officer's salary, the defendant alleged that the relator was not properly commissioned in office. *Held*, that such a defense cannot be set up. *State ex rel. Frank* v. *Goben*, 152 S. W. 93 (Mo.).

Because of the necessity of confidence in public acts, and to protect the rights of parties relying on official acts, a *de facto* title to a public office may not be collaterally attacked. *State* v. *Carroll*, 38 Conn. 449; *People ex rel. Hoffman* v. *Hecht*, 105 Cal. 621, 38 Pac. 941. But this doctrine is in no wise remedial to the officer himself. See 20 HARV. L. REV. 458. Only a public officer lawfully appointed or elected, and installed, has a right to compensation for his services. *Wittmer* v. *City of New York*, 50 N. Y. App. Div. 482, 64 N. Y. Supp. 170; *City of Philadelphia* v. *Given*, 60 Pa. St. 136. But *cf. Cousins* v. *City of Manchester*, 67 N. H. 229, 38 Atl. 724. Thus in an ordinary action of debt for his salary, the plaintiff's title to office may be questioned. *City of Philadelphia* v. *Given*, *supra*; *Sheridan* v. *City of St. Louis*, 183 Mo. 25, 81 S. W. 1082. Also in mandamus proceeding, contrary to the principal case, lack of *de jure* title may be set up. *State ex rel. Dudley* v. *Daggart*, 28 Wash. 1, 68 Pac. 340; *Williams* v. *Clayton*, 6 Utah 86, 21 Pac. 398. When, however, a third party claiming to be a *de jure* officer brings mandamus for his salary, the court by allowing a defense refuses to question the title of the *de facto* officer, for his title can then be justly adjudicated only in a *quo warranto* proceeding to which he is a party. *State ex rel. Vail* v. *Draper*, 48 Mo. 213; *State ex rel. Simmons* v. *John*, 81 Mo. 13. The principal case confuses a suit brought by the *de facto* officer himself with such cases, and by refusing without reason to go into the question of the plaintiff's title to the office, allows a recovery.

MINES AND MINERALS — ADVERSE POSSESSION WHERE SEVERANCE OF SURFACE. — The defendant was owner of the surface of the soil through a deed reserving the minerals to the grantor. The plaintiff was grantee of the gypsum. The defendant mined the gypsum from time to time for more than the statutory period of limitations. *Held*, that an injunction will be granted to restrain further removal. *White* v. *Miller*, 78 N. Y. Misc. 428 (Sup. Ct.).

The right to the surface of land is capable of severance from the right to the underlying mineral deposits which thereby form a distinct corporeal hereditament. *Hartwell* v. *Camman*, 10 N. J. Eq. 128; *Lillibridge* v. *Lackawanna Coal Co.*, 143 Pa. St. 293, 22 Atl. 1035. In case of such severance ordinary possession of the surface for the statutory period does not operate as adverse possession of the minerals. *French* v. *Lansing*, 73 N. Y. Misc. 80, 132 N. Y. Supp. 523; *Armstrong* v. *Caldwell*, 53 Pa. St. 284. Nor are occasional acts of mining and carrying off the minerals sufficient. *Hooper* v. *Bankhead*, 171 Ala. 626, 54 So. 549; *French* v. *Lansing*, *supra*. The possession, to be sufficient, must include a continuous operation of the mines in accordance with the nature of the business. *Gordon* v. *Park*, 219 Mo. 600, 117 S. W. 1163. See *Armstrong* v. *Caldwell*, *supra*, 288. *Cf. House* v. *Palmer*, 9 Ga. 497. The acts must likewise be open and notorious. *Dartmouth* v. *Spittle*, 19 Wkly. Rep. 444. See *Gordon* v. *Park*, *supra*. In general the extent of acquisition by adverse possession without color of title depends on the actual possession of the adverse claimant, which in the case of mines is confined practically to the part being worked. But where the claim is under color of title it is to the limits of that title, even though only part of the land is actually occupied. *Jackson* v. *Olitz*, 8 Wend. (N. Y.) 440. This distinction recognized in general in regard to land is not

clearly drawn in the above cases, but there seems no reason for not applying it. See WHITE, MINES AND MINING, § 433. In the principal case it is not certain that the acts of adverse possession were continuous.

QUASI-CONTRACTS — RECOVERY FOR BENEFITS CONFERRED WITHOUT CONTRACT — RIGHT OF SUBCONTRACTOR WHEN ORIGINAL CONTRACTOR'S CLAIM IS UNENFORCEABLE. — A railroad company contracted to have its railroad built by a foreign construction company. The construction company had the work done by local subcontractors. The railroad company defeated the suit of the construction company on the contract on the ground that the construction company had not complied with a statute providing, under penalty of fine, that foreign corporations should not transact business in the state until certain papers had been filed with the secretary of state. One of the subcontractors thereafter sued the railroad company for the value of his work in constructing the railroad. *Held*, that the plaintiff cannot recover. *Alexander* v. *Alabama Western R. Co.*, 60 So. 295 (Ala.).

The acceptance from a subcontractor of improvements expressly contracted for by a landowner clearly affords no basis from which to imply in fact a promise on his part to pay the subcontractor. *Farquhar* v. *Brown*, 132 Mass. 340; *Cleaves* v. *Stockwell*, 33 Me. 341. And if the landowner must pay the contractor there is no unjust enrichment on which to found a quasi-contractual recovery. *Peers* v. *Board of Education*, 72 Ill. 508; *Fender* v. *Kelly*, 58 Ill. App. 283. Accordingly if the effect of the statute is merely to deny a suit on the contract by the foreign corporation in the state courts the plaintiff here could not recover since the construction company could still sue the railroad company in the federal courts. *Groton Bridge & Mfg. Co.* v. *American Bridge Co.*, 151 Fed. 871; *Dunlop* v. *Mercer*, 156 Fed. 545. Though there is language in the principal case which might indicate that the court takes this view of the statute, it is not certain that a departure is intended from the view previously taken that recovery in any court is made impossible. *Dudley* v. *Collier*, 87 Ala. 431, 6 So. 304; *Chattanooga National Building & Loan Association* v. *Denson*, 189 U. S. 408, 23 Sup. Ct. 630. And the court would probably deny the construction company a quasi-contractual recovery on the forbidden transaction. See *Farrior* v. *New England Mortgage Security Co.*, 88 Ala. 275, 279, 7 So. 200, 201; *Western Union Tel. Co.* v. *Young*, 138 Ala. 240, 243, 36 So. 374, 375. *Cf. Grand Lodge of Alabama* v. *Waddill*, 36 Ala. 313; *Delaware River Quarry & Construction Co.* v. *Bethlehem & Nazareth Passenger Ry. Co.*, 204 Pa. 22, 53 Atl. 533. But see *Dunlop* v. *Mercer*, 156 Fed. 545, 553, 554. But nevertheless there still seems no basis for quasi-contractual recovery by the subcontractor, for he did the work solely on the credit of the construction company. *Cf. Lauer* v. *Bandow*, 43 Wis. 556; *Tripp* v. *Hathaway*, 15 Pick. (Mass.) 47; *Quin* v. *Hill*, 4 Demarest (N. Y.) 69; *United States* v. *Pacific R.*, 120 U. S. 227, 7 Sup. Ct. 490. See KEENER ON QUASI-CONTRACTS, 350. If it be urged that the subcontractor relied ultimately on the railroad for his pay, still as he did not contract with the railroad company for his compensation but chose to sell his services to the construction company for the obligation of the construction company, he has no standing in court to demand a cumulative right.

SALES — IMPLIED WARRANTIES — WHOLESOMENESS OF FOOD SERVED ON DINING CAR. — The plaintiff sued for poisoning due to his eating canned asparagus in the dining car of the defendant company. The goods were of a well-known brand, had been purchased by the company of a reputable dealer, and the company could not by the exercise of the utmost care have discovered the defect. *Held*, that the plaintiff cannot recover. *Bigelow* v. *Maine Central R. Co.*, 85 Atl. 396 (Me.).